

The Procurement Integrity Law

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Overview

- **Ban on disclosing procurement information**
- **Ban on obtaining procurement information**
- **Requirement to report employment contacts**
- **One-year ban on accepting compensation from the contractor**

History of the Procurement Integrity Law

- **Congress enacted the law in 1989.**
- **Congress revised the law in 1996.**
- **Revised version went into effect on 1 Jan 97.**
- **The law is implemented in the Federal Acquisition Regulation (FAR 3.104).**

Ban on Disclosing Procurement Information

- **The law prohibits, before contract award, the disclosure of:**
 - **Contractor bid or proposal information, and**
 - **Source selection information [41 USC 423(a)(1)]**
- **The ban applies to:**
 - **Current and former Federal employees, and**
 - **Anyone who is advising or has advised the U.S. Government regarding the procurement, i.e., contractor employees & consultants. [41 USC 423(a)(2)]**

Ban on Obtaining Procurement Information

- **A person may not knowingly obtain “source selection information” or “contractor bid or proposal information” before contract award, other than as provided by law. [41 USC 423(b)]**
- **The ban applies to everyone, including Federal employees and contractor employees.**

Definition of Source Selection Information (SSI)

- **“SSI” means any of ten types of information:**
 - (1) Bid prices submitted by bidders**
 - (2) Costs or prices submitted by offerors**
 - (3) Source selection plans**
 - (4) Technical evaluation plans**
 - (5) Technical evaluations of proposals**
 - (6) Cost or price evaluations of proposals**
 - (7) Competitive range determinations**
 - (8) Rankings of bids, proposals or competitors**

Definition of Source Selection Information (SSI)

- **SSI means:**

- (9) Reports & evaluations of source selection**

- panels, boards or advisory councils**

- (10) Other information marked as “source selection information” based on a case-by-case determination by the head of the agency, his designee, or the contracting officer that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates. [41 USC 423(f)(2)]**

Definition of Contractor Bid or Proposal Information (CBPI)

- **CBPI means any of five types of information:**
 - **Cost or pricing data**
 - **Indirect costs & direct labor rates**
 - **Proprietary information about manufacturing processes, operations or techniques marked by the contractor IAW applicable law or reg.**
 - **Information marked by the contractor as “contractor bid or proposal information”**
 - **Information marked by the contractor IAW FAR clause 52.215-1(e), entitled “Restriction on disclosure and use of data” [FAR 3.104-1]**

Job Hunting -- Employment Contact Reporting Rule (41 USC 423(c))

If an employee (officer, enlisted or civilian) is --

- Participating personally & substantially in a procurement, and**
- Contacts, or is contacted by, a bidder or offeror regarding possible employment,**

then the employee must --

- Give written report to supervisor & Designated Agency Ethics Official or designee, and**
- Either (1) reject the possibility of employment, or (2) be disqualified from working on procurement until job discussions end & there is no arrangement for employment**

Job Hunting -- Employment Contact Reporting Rule

- **Rule applies only to contracts in excess of the simplified acquisition threshold. [41 USC 423(c)(1)]**
- **“Simplified acquisition threshold” generally means \$100,000. [FAR 2.101]**
- **The rule applies only between the date when bids or proposals are received and the contract award date. This is because the rule applies to contacts with “bidders” & “offerors”, and a company is not a “bidder” or “offeror” until it submits a bid or offer.**

One-Year Compensation Ban -- General

- **People who serve in one of seven positions, or who make one of seven types of decisions, on a contract over \$10 million, may not accept compensation from the contractor for one year. [41 USC 423(d)(1)]**
- **The one-year ban is on accepting compensation from the contractor as an employee, consultant, officer or director. [41 USC 423(d)(1)]**
- **The ban can apply to military officers, enlisted military members, and Federal civilian employees. [FAR 3.104-1]**

Positions Resulting in the One-Year Compensation Ban

- **Procuring Contracting Officer**
- **Source Selection Authority**
- **Member of Source Selection Evaluation Board**
- **Chief of financial or technical evaluation team**
- **Program Manager**
- **Deputy Program Manager**
- **Administrative Contracting Officer**

Decisions Resulting in the One-Year Compensation Ban

- **Decision to award a contract over \$10 million**
- **Decision to award a subcontract over \$10 million**
- **Decision to award a modification that is over \$10 million of a contract or subcontract**
- **Decision to award a task order or delivery order over \$10 million**

Decisions Resulting in the One-Year Compensation Ban

- **Decision to establish overhead or other rates applicable to a contract or contracts valued over \$10 million**
- **Decision to approve issuance of a contract payment or payments over \$10 million**
- **Decision to pay or settle claim over \$10 million**

One-Year Compensation Ban -- When It Starts to Run (FAR 3.104- 3(d)(2))

- **For PCO's, SSA's, SSEB members, & evaluation team chiefs, ban starts on date of contract award**
 - **Exception: If an individual was serving in the position on the date of contractor selection, but not on the date of contract award, the ban begins to run on date of contractor selection**
- **For PMs, DPMs & ACOs, ban starts to run on last day of service in the position**
- **For decisionmakers, ban starts on date of decision**

One-Year Compensation Ban -- Other Points

- **Other divisions: 1-year ban does not apply to accepting compensation from any division or affiliate of a contractor that does not produce the “same or similar products or services” as the entity of the contractor that has the contract the person worked on. [41 USC 423(d)(2)]**
- **If the one-year ban applies, the individual may not accept compensation. [41 USC 423(d)(3)]**
- **If the one-year ban applies, the contractor may not provide compensation. [41 USC 423(d)(4)]**

One-Year Compensation Ban -- Legal Opinions

- **Individuals can request a legal opinion on whether the one-year ban applies to them. [41 USC 423(d)(5); FAR 3.104-6]**
- **The legal opinion must be issued within 30 days after receipt of written request (or as soon thereafter as practicable). [FAR 3.104-6(c)] The opinion is sometimes called a “30-day letter.”**
- **The AFMC Law Office has a handout for clients with instructions on how to prepare a request for a 30-day letter.**

One Year Compensation Ban -- Reliance on Legal Opinions

- **“If the requester is advised in a written opinion by the agency ethics official that the requester may accept compensation from a particular contractor, and accepts such compensation in good faith reliance on that advisory opinion, then neither the requester nor the contractor will be found to have knowingly violated subsection 27(d) of the Act. If the requester or the contractor has actual know-ledge or reason to believe that the opinion is based upon fraudulent, misleading, or otherwise incorrect information, their reliance upon the opinion will not be deemed to be in good faith.” [FAR 3.104-6(d)(3)]**

Bid Protest Provision

- **Procurement Integrity law says a company may not file a bid protest based on a violation of the Procurement Integrity law unless the company--**
 - **Reports the information about the violation to the Federal agency responsible for the procurement, and**
 - **The report is made no later than 14 days after the company first discovered the possible violation. [41 USC 423(g)]**